

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.807 OF 2018

ALEXANDER NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Alexander Njoroge was charged with the offence of **robbery with violence** contrary to **Section 296(2)** of the **Penal Code** in **Nairobi CM's Court Criminal Case No.48 of 2013**. He pleaded not guilty to the charge. After full trial, he was acquitted of the charge of robbery with violence but was convicted of the lesser but cognate offence of handling stolen goods contrary to **Section 322(1)** as read with **Section 322(2)** of the **Penal Code**. The Appellant was sentenced to serve four (4) years imprisonment on 18th November 2016. The Applicant has applied to this court to have the period that he was in remand custody taken into consideration. From the proceedings of the trial court, the Applicant was in remand custody from 14th January 2013 to the time judgment was delivered on 18th November 2018. The Applicant pleads with the court to consider this period so that the custodial sentence that was imposed upon him may be reduced accordingly. Mr. Momanyi for the State was not opposed to the application.

This court has considered the Applicant's plea. **Section 333(2)** of the **Criminal Procedure Code** requires a court sentencing a convict to take into account the period that such convict has been in remand custody prior to his conviction. In the present application, it was clear that the Applicant was in remand custody for a period of three years prior to his conviction. The trial court indicated that it had taken this period into account. However, taking into consideration the charge that the Applicant was convicted of, this court shall take into account that period so that the custodial sentence of the Applicant shall be commuted to the period served. He is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2019

L. KIMARU

JUDGE